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EXAMINER

REICHL, KARIN M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 05/10/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/044,904

Applicant(s)

HEDEN ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

1. The abstract filed 2-24-04 has not been entered because such does not comply with 37 CFR 1.121 effective 7-30-03, i.e. it does not because such does not show the originally filed abstract with the added language underlined and the deleted language struck through. The substitute specification filed 2-24-04 has not been entered because, referring to the marked up copy, e.g. the pages have not been numbered, on page 7, the subsection "MODES...INVENTION" should be retitled --DETAILED DESCRIPTION--, on page 8, line 2, the interconnecting lines 10-13 do not connect portions 5-7, i.e. see same page, line 19, features have been described as not shown but note drawing objections infra, the arrows in Figure 6 as now proposed have not been described, the measurement method does not show the calculation from 25mm to 40mm.

Priority

2. In the amendment to page 1, "priority...119" should be --benefit-- and "2000" should be --2001--.

Specification

Drawings

3. The drawings were received on 2-24-04. These drawings are not accepted by the Examiner. See PTO-948 attached to this action.

4. The drawings are objected to because the text in Figure 6 should be avoided, i.e. numerals should be used to denote the structure and the numerals and the text should be described in the textual description of the invention. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 3-6 and 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Applicant's remarks on pages 9-10 have been considered but are deemed not persuasive since the features of claims 3-6 and 11 are not shown in Figures and can be easily illustrated. For example, the last line of claim 3 could be shown by denoting the edges adjacent 34 and 39, see Figure 5, in Figure 3 or providing a new Figure showing a cross section of the fastener and liner in Figure 3 with the features of claims 3-6 shown therein.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

6. The abstract of the disclosure is objected to because the abstract is too long, i.e. should be in the range of between 50 and 150 words in length. The abstract should include only one paragraph. Legal terminology, i.e. "comprising", "said", should be avoided. Correction is required. See MPEP § 608.01(b).

7. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the abstract, the first sentence of the second paragraph.

8. The disclosure is objected to because of the following informalities: On page 4, line 3, "Patent Specification" should be deleted. On page 5, line 1, "DISCLOSURE" should be -- SUMMARY--. Claims 7 and 13 refer to a bond breaking force with regard to a strip 40 mm in width yet the test method for determining such force set forth on page 12, line 18-page 14, line 23 does not appear to use a strip which is 40mm in width, i.e. appears to use a strip only 25 mm in width. Is one of the widths referred to wrong? If not, where is the test method for the strip of 40 mm in width? Are Fabriflex and Pegas set forth on lines 6 and 10 of page 17 trademarks? If so they should be properly designated as such, i.e. set forth in all capital letters or with a trademark symbol.

Appropriate correction is required.

With regard to Applicant's remarks on pages 9-11, see comments made in paragraphs 1 and 5, supra, e.g. any substitute specification would be in better form if it reflected the arguments made bridging pages 10-11, i.e. showed the calculation involving 8/5, and described what the arrows are in Figure 6, etc.

9. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the

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following is required: antecedent basis for the relative strength of the bonds as claimed in claim 5 should be set forth.

Claim Objections

10. Claims 1 and 3-13 are objected to because of the following informalities: in claim 1, line 22, after “folds”, --and-- should be inserted and on line 4, after “bonding”, --face-- should be inserted. In claim 3, line 3, “a” should now be --the-- and on line 4, the comma after “fasteners” should be put after “condition” instead. In claim 4, line 1, “the” should be --each--. In claim 5, line 3, “relatively” should be --relative--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

11. Claims 3-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 3-4, a positive structural antecedent basis for “the second bonding face” should be set forth, i.e. “second” should be --producer’s--.

Claim Language Interpretation

12. “Mechanical tape fastener systems” and “mechanical tape fasteners” are defined as set forth on page 1, lines 26 et seq. “Breakable bond” or bonds which are breakable are defined as set forth on page 6, lines 20-23. It is noted that as so defined such bond would include a bond

which requires a supplementary material but such material is not designed solely for the storage condition of the tape fastener.

Claim Rejections - 35 USC § 103

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

14. Claims 1, 7-8 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu et al '030 in view of Roessler et al '073.

Claims 1, 8, and 12: See paragraph 12 supra, Figures 1-3, abstract, line 1, the first end portion is 6, the second end portion is 7, the crotch portion is 8, the inner layer is 2, see col. 2, lines 36-37, the outer layer is 3, see col. 2, line 37, and the absorbent body is 4, see col. 2, line 38. The mechanical tape fasteners are 21, the fastening parts are disclosed at col. 4, lines 30-34 and col. 1, lines 19-22, the producer's bonding face is the upper surface of the first end part 24, the user's bonding face is the lower surface of the second end part 26, the first fold part is 26, the other fold part is 24 and the breakable bond is 31, see col. 3, lines 13-36 and col. 4, lines 10-13. It is noted that the claims do not require the producer's bonding face be directly attached to the inner surface of the inner layer. Applicant claims the tape fasteners arranged in their entirety on the inner layer in the storage condition and outermost end edges of the tape fasteners in the storage condition being located interiorly of the side edges of the lateral portions. See portions of Shimizu cited supra, especially Figure 2 and col. 4, lines 10-13 thereof. Figure 2 shows the edge at or near the edge of the outer layer but wrapping the inner layer, i.e. the outermost end edges are not located interiorly of the lateral edges of the side portions because they wrap around

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the inner layer. However note Figures 7 and 9 of Roessler et al, i.e. interchangeability of the wrapping configuration as shown by Shimizu with one in which the tape fastener is arranged in its entirety on the inner layer, i.e. would be arranged entirely on the inner layer in the storage condition and an outermost edge of the fasteners in the storage condition would be located interiorly of the lateral edges of the side portions. To make the tape fastener arrangement of Shimizu the claimed arrangement instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Roessler et al. See again col. 4, lines 10-13 of Shimizu.

With regard to claim 11, see col. 2, line 64-col. 3, line 1, i.e. the tape is not elastic. With regard to claims 7 and 13, these claims claim a bond capable of breaking within a certain force range. As disclosed on page 12, lines 5-16 of the instant specification such bond break force is required to ensure attachment of the fastener to the liner until it is desired to place the article on the wearer when it can manually broken. See paragraph bridging cols. 1-2 and col. 3, lines 25-36 of Shimizu et al, i.e. the general conditions of bond break force are the same. Therefore it would not be inventive to discover the optimum or workable ranges, i.e. the claimed range, by routine experimentation for such conditions, In re Allen et al, 105 USPQ 233.

15. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu et al '030 and Roessler '073 as applied to claim 1 above and further in view of Alberg et al '631.

Applicant claims the mechanical tape fasteners comprising at least one elastic part disposed between the first and second end parts which Shimizu does not teach. However see Figure 4 and Figure 17 as well as col. 9, line 50-59 and col. 10, lines 19-59 of Alberg et al, i.e. interchangeability of a tape tab backing which is inelastic throughout for one which is elastic in

the center portion but not at the end parts. To make the inelastic throughout tape tab of Shimizu et al a tape tab with an elastic center portion as claimed would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Alberg et al '631.

16. Claims 1, 3-4, 6-7 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landvogt '591 in view of Schaar '921.

Claims 1 and 12: See section 12 supra, Figures 1-2, col. 1, lines 17-19, the first end portion is part of 50, the second end portion is part of 48, the crotch portion is between the end portions, the inner layer is 26, see col. 4, line 61, the outer layer is 30, see col. 4, line 62, and the absorbent body is 28, see col. 4, lines 62-63. The mechanical tape fasteners are 60, the fastening parts are 64, the producer's bonding face is the upper surface of the first end part 74, the user's bonding face is the upper surface of the second end part 75, the first fold part is 75, the other fold part is either 74 or 65 or both and the breakable bond is 63 or 63 and 65, see col. 9, lines 4-38 and 50-60, e.g. the "transport configuration" is the storage condition, and col. 10, lines 33-37, i.e. "can" also infers "cannot". Also see col. 8, line 65-col. 9, line 3. It is noted that the release tape 65 is not provided solely for storage but also is provided to provide a Y-bond and does not require a release agent coating, i.e. is a "breakable bond" as defined. Applicant claims the tape fasteners arranged in their entirety on the inner layer in the storage condition and outermost end edges of the tape fasteners in the storage condition being located interiorly of the side edges of the lateral portions. See portions of Landvogt cited supra, especially Figure 2. Figure 2 shows the producer's face secured directly to the outer surface and the other strip 65 secured directly to the inner surface, i.e. the outermost edges are not located interiorly of the lateral side edges of the side portions. However note Figures 1-2 and Figures 3-4 of Schaar i.e. interchangeability of the

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wrapping configuration as shown by Landvogt with one in which the tape fastener is arranged in its entirety on the inner layer, i.e. would be arranged entirely on the inner layer in the storage condition and an outermost edge of the fasteners in the storage condition would be located interiorly of the lateral edges of the side portions. To make the tape fastener arrangement of Landvogt the claimed arrangement instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by Schaar.

With regard to claims 3 and 4, see portions of Landvogt cited above and the length of 74 versus 75, i.e. when folded along the line between 74 and 75 the second end part 75 will be located laterally interior of the first end part.

With regard to claim 6, the outermost end part 61 is coated with a pressure sensitive adhesive which provides a adhesion force, see col. 10, lines 52-53. It is noted that the terminology "weak" is considered relative. Therefore, the adhesion force of Landvogt is also considered "weak" absent specific dimensions of adhesive force being claimed. It is also noted that the claim does not set forth adhesion with regard to what. The adhesive 63 on the outermost end part adheres to itself to form the grip tab.

With regard to claim 11, see col. 10, lines 22-33, i.e. the tape is not elastic. With regard to claims 7 and 13, these claims claim a bond capable of breaking within a certain force range. As disclosed on page 12, lines 5-16 of the instant specification such bond break force is required to ensure attachment of the fastener to the liner until it is desired to place the article on the wearer when it can manually broken. It is noted that the claims do not require the permanent destruction of the bond so that it can not be refastened. See col. 9, lines 4-14 and col. 12, lines 40-49 of Landvogt, i.e. the general conditions of bond break force are the same. Therefore it would not be

inventive to discover the optimum or workable ranges, i.e. the claimed range, by routine experimentation for such conditions, In re Allen et al, 105 USPQ 233.

17. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Landvogt and Schaar as applied to claim 1 above and further in view of Scripps '065 and Goulait '384.

Applicant claims the tape fasteners having a width between 10 and 30 mm which Landvogt does not teach. See Scripps, '065, col. 10, lines 7-23, and Goulait '384, col. 10, lines 43-55, i.e. the width of the tape of an adhesive/ hook and loop fastener is either 12.5 mm or 25 mm. To make the tape of the adhesive/hook and loop fastener of Landvogt a width between 10 and 30 mm in width as taught by Scripps and Goulait would be obvious. See In re Siebentritt, 54 CCPA 1083(two equivalents are interchangeable for their desired function), i.e. substitution of structure which functions as tape for an adhesive/hook and loop fastener for another.

Allowable Subject Matter

18. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims as well as overcoming all the informalities therein.

Response to Arguments

19. Applicant's remarks with respect to matters of form are either deemed moot in that the issue has not been reraised or is deemed not persuasive for the reasons already discussed supra. Applicant's remarks with regard to the 102 prior art rejections have been considered but are deemed moot in that they have not been reraised. The remarks with respect to the 103

rejections have been considered but are deemed not persuasive. As best understood Applicants appear to argue that since neither of the references alone teach all the claimed features that the combination thereof does not disclose the claimed invention. However, if the either one of the references taught the invention a 102 rejection not a 103 rejection would be appropriate. With regard to a 103 rejection, it is what the references as a whole teach which is considered, see rejection supra. The combination of the teachings of the references together teach the claimed invention.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See Figure 9 of Hoey. The '871 and '873 patents show folded secured belts.

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The amendments to claims necessitated any new grounds of rejection.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
May 6, 2004